



Department of Energy
Carlsbad Field Office
P. O. Box 3090
Carlsbad, New Mexico 88221

JUL 22 2003

Mr. Steve Zappe
New Mexico Environment Department
2905 E. Rodeo Park Drive, Bldg. 1
Santa Fe, NM 87505



Subject: Letter from Southwest Research and Information Center Dated July 16, 2003

Dear Mr. Zappe:

The New Mexico Environment Department (NMED) recently received a letter from Mr. Don Hancock of the Southwest Research and Information Center (SRIC) regarding public comments submitted by the Department of Energy (DOE) and Washington TRU Solutions (WTS), jointly known as the Permittees for the Waste Isolation Pilot Plant Hazardous Waste Facility Permit, on permit modification requests (PMRs) submitted to NMED on May 14, 2003.

On page one, the second paragraph of the SRIC letter asserts that “*Some of the responses actually are substantial changes in the permit modification requests that have the effect of circumventing the public participation process.*” This is incorrect for several reasons. First, the Permittees’ official comments to the NMED during the comment period were **comments only**. The Permittees are only requesting changes – not making changes – to the PMRs based upon comments received from stakeholders. NMED may accept or reject these comments as they have the ability to do with all comments. NMED has suggested previously that this is the proper mechanism by which NMED may consider a change to a PMR.

The changes that SRIC alludes to in their letter, are not extensive, and can be summarized as follows:

- only three suggested changes to the Drum Age Criteria (DAC) PMR, all of which were non-substantive clarifications;
- only four suggested changes to the Sealed Sources PMR, **all** of which impose **more stringent** conditions on the generator site; and
- only one suggested change to the Addition of New Hazardous Waste Numbers (suggested changing the word “or” to “and”).

The Permittees made numerous accommodations to stakeholders to ensure that they were well informed and had more than sufficient time to comment on the PMRs. None of these accommodations are required by the regulations, and the Permittees spent considerable time and resources to provide this extra level of public participation.

030754



JUL 22 2003

Specifically, the Permittees:

- submitted draft versions of the PMRs to stakeholders **before** they were officially submitted to the NMED in order to allow for stakeholder input;
- after transmitting the draft versions of the PMRs, held a pre-submittal workshop in Santa Fe on April 29, 2003 for stakeholders to ask questions and provide verbal or written comment;
- after holding the pre-submittal meeting, provided responses to all comments received to stakeholders;
- mailed copies of the final PMRs to stakeholders when they were officially transmitted to NMED;
- held an extra public meeting in Santa Fe, NM on the PMRs on June 5, 2003 after the PMRs were officially submitted to NMED - this meeting was held to accommodate stakeholders who did not want to travel to a similar meeting held in Carlsbad; and
- submitted copies of the Permittees' responses to comments from the public meetings to stakeholders.

In addition to these supra-regulatory opportunities for public participation, stakeholders also had the chance to participate via the normal public participation provisions mandated by the regulations, including:

- Public meeting held in Carlsbad, NM on June 3, 2003 (required under 40 CFR 270.42(b)(4) and 270.42(c)(4)); and
- the normal 60 day public comment period in which any member of the public may submit written comments to the NMED on the PMRs via the U.S. mail, facsimile or electronic mail.

No representative of SRIC attended the pre-submittal stakeholder meeting or the public meetings in Santa Fe or Carlsbad. Moreover, SRIC did not submit any written or verbal comments to the Permittees regarding draft versions of the PMRs.

SRIC asserts in the fourth paragraph of page one of the letter that "...*voluminous responses indicate that the modification requests were incomplete,...*" The Permittees believe that the document is not unduly "voluminous", but was conscientiously developed in an effort to create a reader-friendly document. The Permittees' developed a double-spaced document, which restated all comments, both verbal and written, from the stakeholders, then provided responses immediately following the respective comments. Although not required by the regulations to support the modification requests, the comment response document provides copies of various generator site and/or facility records in an attempt to provide helpful documentation to clarify information initially submitted in the modification packages. Further, very few of the comment responses related to either the Sealed Sources or the DAC PMRs dealt with the actual PMR itself. Most of these comments dealt with ancillary issues. The Permittees, however, believed that it was appropriate to respond to all comments that were received.

JUL 22 2003

On page two, the third paragraph, SRIC asserts that "...the permittees now explicitly propose to allow leaking sealed sources to be permitted and submit new language that was not included in the request. Comment 34 response."

We have enclosed Comment 34 and the response to it to this letter for your review. This comment indicates exactly the opposite of what SRIC contends. The proposed new language **ensures** that WIPP will not accept leaking sealed sources and places this additional constraint upon the generator site. This comment arose at the pre-submittal meeting in Santa Fe on April 29, 2003. The Permittees responded formally to all these comments and even though SRIC did not attend that pre-submittal meeting, the Permittees sent a comment response package to SRIC.

On page two, the fourth paragraph, SRIC asserts that "...the permittees now add information that was knowingly omitted from the request that the direct loaded 85-gallon drum has not been approved by the Nuclear Regulatory Commission (NRC) and that an application for such approval has not been submitted. Comment 18 response."

We have enclosed Comment 18 and the response to it to this letter for your review. The NMED approved the use of direct loaded 85-gallon drums on November 25, 2002. SRIC did not comment at that time on the lack of NRC approval for direct loaded 85-gallon drums. SRIC's comments on that modification are enclosed for your review. Although direct loaded 85-gallon drums are not approved for TRUPACT-IIIs they are approved by NRC to be shipped to WIPP in HalfPACT containers. SRIC's comment is not related to the PMR currently pending before NMED.

SRIC asserts that the Permittees have circumvented the public participation process. Nothing is further from the truth. Contrary to SRIC's claims, the Permittees have extended their efforts to go above and beyond the regulations to ensure public involvement, before and during the formal permit modification process.

Finally, none of these PMRs are contentious, complex, or controversial. None of the PMRs generated significant public interest. The public notice for these PMRs was published in seven newspapers throughout New Mexico. The fact sheets and public notices were mailed to over 250 interested parties. From that, only eleven individuals and/or organizations responded to the NMED with comments. Of those eleven commentors, four of these were form letters and two were from oversight groups (Environmental Evaluation Group and New Mexico Attorney General).

Based upon these facts and the lack of public concern regarding these PMRs both DOE and WTS respectfully request that the NMED proceed with processing these Class 2 PMRs without delay and not provide yet **another** 60-day comment period.

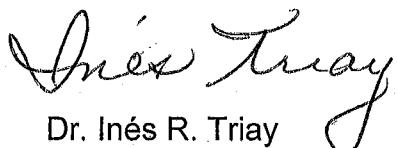
Mr. Steve Zappe

-4-

JUL 22 2003

We will be available to discuss this issue with you at your convenience. If you have any questions, please contact me at (505) 234-7300.

Sincerely,



Dr. Inés R. Triay
Manager

Enclosure

cc: w/enclosure
T. Hughes, NMED
C. Lundstrum, NMED
S. Martin, NMED

lid with a filter vent. The input file to VDRUM is set up so that the release rate across the outermost layer of confinement equals the release rate, or hydrogen diffusion characteristic, across the inner lid filter vent. The other layers are described as ultra-thin walled layers of confinement that effectively describe waste with no additional layers of confinement (i.e., no inner or liner bags), which is consistent with the packaging configuration specified in Table B1-8 as Packaging Configuration Group 7.

Comment 18: Direct-loaded 85-gallon drums are not currently acceptable for transportation in TRUPACT-IIIs, according to Revision 19b of the *TRUPACT-II Authorized Methods for Payload Control* (TRAMPAC; April, 2002; see Section 2.1.1 for currently allowed payload configurations). Perhaps equally important, the TRUPACT-II *Certificate of Compliance* (Certificate 9218, Revision 15; April 9, 2003) states (p. 2):

Materials must be packaged in one of the following payload containers: a 55-gallon drum, a 100-gallon drum, a standard waste box (SWB), a standard pipe overpack, an S100 pipe overpack, an S200 pipe overpack, or ten-drum overpack (TDOP).

Note that 85-gallon drums are not one of the available payload containers.

The NMED might want to inquire as to progress toward gaining the Nuclear Regulatory Commission's (NRC) acceptance of the 85-gallon containers for direct-loading purposes, and inclusion of 85-gallon drums

into the TRUPACT-II *Certificate of Compliance*.

Response: Agree with comment. The application for Revision 20 of the TRUPACT-II Authorized Methods for Payload Control (TRAMPAC) (currently under preparation for submittal to the U.S. Nuclear Regulatory Commission [NRC]) includes the 85-gallon drum as an authorized payload container for TRUPACT-II transport. The direct load configuration of the 85-gallon drum can be shipped only after approval by the NRC.

Comment 19: The Advanced Mixed Waste Treatment Facility (AMWTF), a WIPP waste generator, plans to compact waste in 55-gallon drums and place these "pucks" in 100-gallon drums to ship to WIPP. The PMR proposed text change contains the following statement (p. B-2):

If a 100-gallon drum (i.e. Packaging Configuration Group 7) contains a compacted 55-gallon drum containing a rigid liner, the 55-gallon drum must meet the appropriate 55-gallon drum DAC listed in Table B1-6, B1-7 or B1-10 to ensure that [Volatile Organic Compound] VOC solubility associated with the presence of the 55-gallon rigid drum liner does not impact the DAC for the 100-gallon drum.

When the 100-gallon drum is the container being sampled for headspace gas the sorption of the liner would also potentially affect the gas dispersal from other compacted 55-gallon drums packaged in the 100-gallon drum, and there would be

Comment 34: The proposal calls for contamination survey results that validate the integrity of each sealed source. (B-22). The requirement should be stated quantitatively, so that it is clear how "integrity" is determined. Further, the permit should state how sealed sources that do not meet the integrity test are managed.

Response: The applicable DOT regulations define integrity in quantitative terms. That is, if a sealed source has surface contamination in excess of 0.0005 micro Curies removable radioactivity it is considered leaking and must be placed in a special form capsule to meet DOT and NRC requirements. Specification of DOT and NRC standards in the HWFP captures this requirement. It is requested that Section B-3a(1)(iii), 4th bullet be revised to read as follows "The integrity of each sealed source must be validated by documented contamination survey results to meet the requirements of 10 CFR 34.27, which must be assembled as part of the AK documentation."

Comment 35: The permit modification seems to call for visual examination (VE) at the time of packaging; i.e., it calls for verification of the use of a sealed container less than four liters in size and made of non-VOC bearing materials. It should be stated that such VE is to be performed at the generator site as part of the waste characterization process, rather than being recorded as acceptable knowledge.

Response: Because all sealed sources are already generated, they are retrievably stored waste and have significant amounts of AK associated with them. Because they are being packaged at LANL prior to disposal at WIPP, the WIPP permit requires that they

Comments Received By NMED on the WIPP General Class 2 Permit Modification Requests Dated June 28, 2002

Comment Number	Commenter/Affiliation	Topic Area	Commentor Identifier	Comment Summary [Original comment, DOE response to the comment]	NMED Response	Include in Permit? y/n	Reviewer (initials)
				<p>There could be serious problems if this modification and the DAC modification are both approved. The DAC modification does not include every possible packaging configuration in the look-up tables. If Applicant knows that a container or even a whole waste stream is packaged with a configuration that is not in the tables, those containers cannot be shipped to WIPP under the DAC modification unless they are repackaged with an acceptable configuration. However, if Applicant does know the packaging configuration, that waste can be shipped to WIPP using the most conservative DAC in the look-up tables. Since neither RTR nor AK can be used to officially "know" what the configuration is for the purposes of the DAC, if RTR is allowed to be used instead of VE for newly generated waste or waste being characterized as newly generated waste, Applicant could claim that the packaging configuration for this waste is "unknown."</p>	<p>NMED partially concurs with the issues raised by the commentor. It is agreed that the visual examination technique can document packaging configurations that cannot be determined by AK or radiography. However, NMED has mandated that visual inspection results be included in the AK record, and sites would be well advised to collect packaging configuration information as part of this activity for inclusion in the AK record to ensure application of the appropriate DAC.</p>		
				<p>Thus, this would be a way for Applicant to ship waste to WIPP that would otherwise be unshippable even if Applicant "knows" unofficially that the packaging configuration is not in the look-up tables.</p>	<p>The commentor expresses concern that intentional deception could and would take place to facilitate waste shipment. NMED has, however, observed successful identification of many issues during audits, and appropriate implementation of the audit process should mitigate this occurrence.</p>	N	AA
6	SRIC	general	G	<p>SRIC requests that NMED deny all seven requested permit modifications submitted on June 28, 2002 because they are all substantially incomplete, the activities proposed do not protect public health and the environment, and several aspects of the requests are not consistent with the regulations.</p>	See response to Comment No. 3.	N	
6.1	SRIC	Additional Waste Container Types	G	<p>The applicant's request is to "add waste containers, including direct loaded 85-gallon drums, direct loaded Ten Drum Overpacks, and 100-gallon drums." (letter from Inés Tray and J.L. Lee of June 27, 2002) This language implies that 100-gallon would not be direct loaded. However, the proposed language in the permit modification would allow direct loading of 100-gallon drums. Indeed, it appears that 100-gallon drums are only to be used for direct loading as they are not included as overpacks. SRIC strongly objects to the erroneous description of the request, and urges that NMED inform the Permittees that is cannot approve this on any request that is inaccurate.</p>	<p>NMED does not concur with the issues raised by the commentor. NMED's evaluation of the permit modification request takes into account the entire modification request package; in the context of the modification request NMED believes that the cover letter for the permit modification reflects the content of the modification request. Nowhere in the modification request are 100-gallon drums ever referred to as "overpacks", unlike 85-gallon drums or TDOPs. Thus, the expectation is that 100-gallon drums are intended for direct loading.</p>	N	RT
6.2	SRIC	Additional Waste Container Types	G	<p>The modification request is very substantially incomplete. While it requests approval for direct loading of TDOPs and 85-gallon drums (and 100-gallon drums), it does not include revisions required in the permit's B attachments regarding waste characterization procedures for those containers. For example, SRIC believes that radiography will be more difficult and less accurate for TDOPs and 85-gallon drums (and 100-gallon drums). Thus, different procedures would need to be added to the permit to require adequate characterization of such containers. A complete request would include detailed data on how waste characterization, including radiography, would be conducted on the containers and demonstrate that the existing alternative characterization procedures provide accurate results. Or the request would provide data that incorporate those procedures into the permit. Changes in waste characterization requirements in the B attachments also require changes in the B6 checklists, which are not included in the request.</p>	<p>NMED does not concur with the issues raised by the commentor. The permit currently has performance based radiography standards that apply to all types of waste containers; therefore, detailed radiography procedures for each of the waste container types are not warranted. Also, procedures for radiographing new container types must be examined during audits, and the results must be presented in audit reports demonstrating compliance with those standards. NMED must review and approve audit reports prior to receipt of waste characterized by those procedures.</p>	N	RT

Comments Received By NMED on the WIPP General Class 2 Permit Modification Requests Dated June 28, 2002

Comment Number	Commentor/Affiliation	Topic Area	Commentor Identifier	Comment Summary [Original comment, DOE response to the comment]	NMED Response	Include in Permit? y/n	Reviewer (initials)
6.3	SRIC	Additional Waste Container Types	G	The request does not include requirements related to DAC. The existing DAC and proposed DAC that went to hearing on August 26-28, do not include any DAC for 85-gallon drums, TDOPs, and 100-gallon drums. It is inappropriate and contrary to the requirements of 40 CFR 264 to have waste in containers that are not adequately characterized.	NMED concurs with the issues raised by the commentor. The specific modification language proposed by the Permittees regarding the waste container types is acceptable and will be added to the permit. However, NMED will not allow receipt of these additional waste containers until appropriate drum ages are established through a future permit modification.	Y-with changes	RT
6.4	SRIC	Additional Waste Container Types	G	The request is also incomplete because it states that containers may be overpacked, repair/patched or repackaged, but does not describe either the containers or processes to do such work. While a 85-gallon drum can be overpacked in an 85-gallon drum, or TDOP, into what container can 85-gallon or 100-gallon drums or TDOP be overpacked? SRIC also believes that procedures to determine which drums should be repaired, patched, or overpacked must be much more detailed. How and where such operations would take place at specifies that TDOPs will decontaminated, WIPP should be specified. Personnel qualifications and training for such operations also must be specified. Whether repair or patching should occur must also be discussed because SRIC believes that in some situations WIPP does not have adequate capability to handle defective containers and they might have to be shipped to some other site. Those circumstances should be specified in the permit.	NMED partially concurs with the comment. The Permittees did not specify how container condition requirements of 49 CFR §173 and §178 would be met. Attachment F, Section F-4d of the permit modification specifies that TDOPs will decontaminated, repaired/patched in accordance with 49 CFR §173 and §178, or returned to the generator - TDOPs will not be overpacked.	Y-with changes	RT
6.5	SRIC	Additional Waste Container Types	G	SRIC believes that because of the complexity of the requested modification, any such request must be subject to class 3 modification procedures, including the opportunity for public hearing.	See response to Comment No. 3.2	N	RT
6.6	SRIC	Addition of code U134 (HF) to list of Part A wastes	G	Despite the fact that this modification request was previously rejected by NMED, it has been resubmitted in an incomplete and unapprovable form. The PMR does not meet RCRA and HWA requirements and is not protective of public health and the environment. The possibility of having prohibited items at WIPP is of special concern and certainly is not protective of public health and the environment. The request must be denied.	See response to Comment Nos. 2.63, 2.64, and 2.65.	N	AA
6.7	SRIC	Addition of code U134 (HF) to list of Part A wastes	G	According to 40 CFR 261.33(f), U134 exhibits toxicity and corrosivity characteristics. Thus, the modification request must provide actual data that all waste with the U134 code is not corrosive or chemically incompatible, which otherwise would be prohibited at WIPP. The assertion that HF "has been complexed/neutralized and is no longer detectable in the waste stream" is not actual data. And even if it is the case for U134 at the INEEL, the modification request would allow U134 in waste from any site. The permit modification is clearly incomplete in not providing data demonstrating that U134 is nondetectable and not corrosive or chemically incompatible at all sites.	See response to Comment Nos. 2.63, 2.64, and 2.65.	N	AA
6.8	SRIC	Addition of code U134 (HF) to list of Part A wastes	G	The Permittees assert that "INEEL will be required to show through acceptable knowledge or testing and analysis (visual inspection or similar testing) that the debris waste form does not contain liquid waste." SRIC is not satisfied with that assertion given that the August 5-9 inspection at INEEL showed that waste may already have been shipped to WIPP with free liquids. Thus, SRIC believes that if U134 is ever approved as a waste code, there should be a requirement for VE of each drum to ensure that there are no liquids, because, based on the audit, the AK and radiography process at INEEL is not adequate to detect all liquids.	NMED partially concurs with the issue raised by the commentor. While it is agreed that there was a liquid issue associated with some INEEL containers, none were assigned the U134 code to NMED's knowledge and all questionable containers were segregated. Also, INEEL received a CAR from the Permittees during audit, requiring the re-review of all radiography tapes for the containers of question to ensure that no liquid bearing containers had been shipped.	N	AA